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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 143

IN THE MATTER OF
LEATHERHIDE INDUSTRIES, INC. and
JOHN M. BENNETT,
Petitioners,

LAWRENCE C. GUTMAN, Trustee, and
EVANS-JOHNSON COMPANY, Purchaser,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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No.

IN THE MATTER OF

LEATHERHIDE INDUSTRIES, INC., and
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—against—

LAWRENCE C. GUTMAN, Trustee, and
EVANS-JOHNSON COMPANY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Leatherhide Industries, Inc., and John M. Bennett, respectfully pray for a writ of certiorari to the United States Court of Appeals for the Second Circuit, to review a determination of that Court rendered on March 25, 1963, affirming on a consolidated appeal certain orders of the United States District Court for the Southern Dis-

trict of New York. Those orders upheld an adjudication in bankruptcy, approved a certain compromise sale, dismissed a petition for reorganization and refused to certify additional papers.

On April 9, 1963, petitioners duly applied to the Court of Appeals for rehearing *en banc*, which application was denied on April 19, 1963.

Opinions Below

1. The opinions of the Referee and the District Judges are set forth in the appendix to appellants' brief below.

2. The opinion of the Court of Appeals is set forth in the appendix, *infra*.

3. No opinion was rendered on the petition for rehearing *in banc* other than the following memorandum, signed by Chief Judge LUMBARD:

> "No active circuit judge having requested that the case be reheard in banc, the petition is denied."

Jurisdiction

The Court of Appeals' judgment was entered on March 25, 1693, and rehearing denied on April 19, 1963. The jurisdiction of this Court is invoked under 28 United States Code Sec. 1254 (1).

Statutes Involved

General Order 47:

> "Unless otherwise directed in the order of reference the report of a referee or of a special master shall set forth his findings of fact and conclusions of law, and the judge shall accept his findings of fact unless clearly erroneous. The judge after hearing may adopt the

report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions."

11 U. S. Code Sec. 67 (a), subd. 8:

"Referees shall * * * prepare promptly and transmit to the clerks certificates on petitions for review of orders made by them, together with a statement of the questions presented, the findings and orders thereon, the petition for review, a transcript of the evidence or a summary thereof, and all exhibits * * *"

11 U. S. Code Sec. 67 (c), prior to 1960 amendment:

"A person aggrieved by an order of a referee may, within ten days after the entry thereof, or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing * * *"

11 U. S. Code Sec. 72 (a):

"The creditors of a bankrupt, exclusive of the bankrupt's relatives or, where the bankrupt is a corporation, exclusive of its stockholders or members, its officers, and the members of its board of directors or trustees or of other similar controlling bodies, shall, at the first meeting of creditors after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, appoint a trustee or three trustees of such estate. If the creditors do not appoint a trustee or if the trustee so appointed fails to qualify as herein provided, the court shall make the appointment * * *"

11 U. S. Code Sec. 92 (a):

"Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and who are present, except as herein otherwise provided."

11 U. S. Code Sec. 93 (n):

"Except as otherwise provided in this title, all claims provable under this title, including all claims of the United States and of any State or any subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed * * *"

11 U. S. Code Sec. 94 (a) prior to 1962 amendment:

"Creditors shall have at least ten days notice by mail * * * of * * * (6) the proposed compromise of any controversy in which the amount claimed by either party in money or value exceeds $1,000 * * *"

11 U. S. Code Sec. 110, subd. 3 (f):

"The court shall appoint a competent and disinterested appraiser and upon cause shown may appoint additional appraisers, who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof. Real and personal property shall, when practicable, be sold subject to the approval of the court. It shall not be sold otherwise than subject to the approval of the court for less than 75 per centum of its appraised value * * *"

11 U. S. Code Sec. 541:

"Upon the filing of a petition by a debtor, the judge shall enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith, or dismissing it if not not so satisfied."

11 U. S. Code Sec. 606:

"The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter."

11 U. S. Code Sec. 610:

"An attorney for creditors or stockholders shall not be heard unless he has first filed with the court a statement setting forth the names and addresses of such creditors or stockholders, the nature and amounts of their claims or stock, and the time of acquisition thereof, except as to claims or stock alleged to have been acuired more than one year prior to the filing of the petition."

11 U. S. Code Sec. 776:

"If the statement of the executory contracts and the schedules and statement of affairs, as provided in paragraph (1) of section 724 of this title, are not duly filed, or if an arrangement is not proposed in the manner and within the time fixed by the Court, or if an arrangement is withdrawn or abandoned prior to its acceptance, or is not accepted at the meeting of creditors or within such further time as the Court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirma-

tion is not filed within the time fixed by the Court, or if confirmation of the arrangement is refused, the Court shall

"(1) Where the petition was filed under section 721 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

"(2) where the petition was filed under section 722 of this title, enter an order, upon hearing after notice to the debtor, the creditors, and such other persons as the Court may direct, either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the Court may be in the interest of the creditors: *Provided, however*, That an order adjudging the debtor a bankrupt may be entered without such hearing upon the debtor's consent."

Statement of Proceedings

This petition presents for review a series of orders of the United States District Court for the Southern District of New York, predicated upon orders made by referees in bankruptcy, with respect to the business and property of LEATHERHIDE INDUSTRIES, INC., a publicly held corporation. The several orders improperly and unlawfully adjudicated the corporation a bankrupt; approved the transfer of all its assets for a grossly inadequate consideration to a cabal of individuals; dismissed a Chapter X reorganization petition filed in good faith and implemented by substantial cash, and denied certification of other material papers. The various steps taken to denude the corporation of its property and to frustrate the reorganization were characterized by fla-

grant violation of the applicable provisions of the pertinent statutes and manifest hostility of a prejudiced referee, and have resulted in a loss of over $500,000. and a shocking injustice, whose victims are the creditors, some 400 stockholders throughout the United States, and the State and Federal Governments by reason of the effective elimination of all tax liability.

The need for conciseness herein precludes a detailed factual recital. However, this is no ordinary bankruptcy proceeding and a brief recital of the background and the proceedings will be helpful. Respondents have until now managed to further a fraudulent scheme, whose consummation merely awaits action by this Court favorable to them.

For an insignificant net consideration of $5,000. they have seized a practically new plant costing $500,000. and worth $200,000. (Sec. 670). The Court of Appeals has termed this valuation "highly exaggerated," but it is impossible to study the record without fairly concluding a value, on the most conservative basis, running well into six figures. The result is a demonstrable quick net profit of $50,000. to respondent Evans-Johnson Company—which did not even bother to file a brief or argue the case in the Court of Appeals.

Petitioner corporation's semi-automated mass production plant for the manufacture of quality leather from scrap has a capacity of one million square yards per year. Continuous mass production is shown in the top section of the picture of the plant (185a). The entire five year output had been sold under a contract which would have netted a profit of one million dollars per year. A default of the purchaser (Vitex Plastics) in making a $227,000 payment inspired the corporation's former underwriter and former attorney (both under indictment) to concoct a plan to acquire the assets. Throughout they have attempted, with the

selfish cooperation of respondents, to vilify petitioner Bennett, the engineer who invented and perfected the process, and to nullify his dedicated efforts to preserve the business.

Thus the plant was virtually given away at a time when reputable, responsible interests such as Charles S. Fields, Inc., Lea Fabrics, Inc. (by Frederick Payne, president) and Waggoner Stores Co. (by Robert S. England, president)—the latter offering $50,000—were prepared to pay the creditors in full. See 207a-209a. All of the foregoing were apart from the competing offer—far superior to that of Evans Johnson Company—represented by the certified check for $15,000 still in the possession of the attorney for petitioners.

In the face of the foregoing circumstances (136a-147a), respondents and their coadjutors, bent upon defeating reorganization by whatever means, leveled false and quite groundless charges against petitioners, and thereby contrived to procure favorable decisions upon which they now rely as constituting proof. A single illustration of the unscrupulous procedure is afforded by the following: Had the Referee been aware that respondent Evans-Johnson Company neither paid nor even had the $12,500 on November 13, 1959, he surely would not have signed the order sanctioning the transfer (petition for rehearing, p. 4, par. 8; p. 12, par. 10). A necessary corollary is that if Judge Levet had been told that the transfer was not completed on November 13 or 16, 1959, he surely would not have denied the petition for reorganization. Respondents have never controverted that there was no actual sale of the plant and equipment on November 13, 1959, or since, but that respondent trustee transferred the property on that day without consideration. This is shown by the trustee's first report filed a year later (November 25, 1960; Rec. 1973-1977) and the payment of $7,500 on December 23, 1959 for alleged "use and occupation"—in itself a spurious and illegal claim under the law of Ohio, where

the plant is situated. See *Economy Savings & Loan Co.* v. *Hollington* (1959), 105 Ohio App. 243. Another illustration of fraud is the trustee's brazen declaration in open Court more than two months after the "sale" (R. 1840-1841) that he was willing to accept $25,000.00 for the very same property which he had already pretended to surrender title.

Questions Presented

The several questions raised are indicated in the captions of the argument's subdivisions below.

Reasons for Granting Writ

The argument has consistently been made by petitioners below, and they reiterate it in this Court, that the effect of the holding sought to be reviewed is a judicial *imprimatur* upon a monstrous and far-reaching fraud. Numerous honest creditors and hundreds of innocent stockholders are suffering a serious financial loss. Both the Federal and The State (New York) governments are barred from receiving the taxes lawfully owing. While petitioners recognize that this is not the forum for the presentation of questions of fact, they contend that the facts necessary to sustain the determination are absent, so much so as to render the holding grossly erroneous; also, that no technical impediment bars appellate correction.

Furthermore, the case presents a number of questions upon which the decision thus far reached apparently contravenes established law. The ruling of the Court of Appeals is at variance with the holdings of other Federal Courts of Appeals on the same subjects. The diversity of opinion in different circuits relates to important questions of Federal law which should be settled by this Court, and the departure from the accepted and usual course of judicial proceedings warrants the exercise of the most authoritative supervision.

Moreover, the questions involved relate to corporate reorganization and the lawful disposition of the assets of debtors. These matters arise frequently, deal with the conduct of many business operations and are of constant importance to public economy.

Finally, if any additional indication were required that the petitioning corporation's rights have not been lawfully adjudicated, it appears in the following significant circumstance; despite the fact that all papers filed by petitioners in the Court of Appeals, including appendix and brief, designated petitioner LEATHERHIDE INDUSTRIES, INC., as appellant, and it had duly filed five notices of appeal (215a-220a, 223-224a). The Court of Appeals advisedly omitted the corporation's name from the caption of the opinion. Accordingly, although the appeal had actually been prosecuted by hundreds of stockholders, their company was summarily and illegally eliminated as an appellant—a procedure for which no precedent can be found.

ARGUMENT

QUESTION NO. 1

Whether a bankrupt is a proper party to move to vacate an order of adjudication.

The timely action taken by petitioner corporation in this regard (Rec. 307-325) is supported by authority *Manick* v. *Hoffman* (C. A. 9, 1953), 205 F. 2d 965; *Re Columbia Real-Estate Co.* (D. C. Md. 1900), 101 F. 965; Remington on Bankruptcy, 5th ed., Sec. 397.

QUESTION NO. 2

Whether a referee in bankruptcy has jurisdiction to order an adjudication in the absence of any of the statutory grounds therefor.

11 U. S. Code, Sec. 776 specifically enumerates the conditions permitting adjudication during the pending of an arrangement proceeding. None of them existed herein, but an adjudication was summarily ordered. The Court of Appeals declined to review this point, on the ground that no appeal was taken from a certain nonexistent order. The holding is contrary to *Bland* v. *Hartman* (C. A. 9, 1959), 245 F. 2d 311.

QUESTION NO. 3

Whether there may be a valid adjudication in bankruptcy without the statutory notice to creditors.

The statute last cited also makes notice to creditors an indispensable requirement of adjudication. No such notice was given herein. Nor may notice of hearing on confirmation of a plea (Rec. 327-A) be enlarged in scope to embrace a possible adjudication. Re *White's Jewelers* (D. C. Mo. 1949), 88 F. Supp. 145.

QUESTION NO. 4

Whether the refusal to receive additional evidence in support of an application to review an adjudication is error in view of the contrary holdings in other circuits.

General Order No. 47, authorizing the judge to receive further evidence, is, as the present case illustrates, virtually ignored in the Second Circuit. This is at variance

with established procedure elsewhere, *e.g.*, re *J. Rosen & Sons* (C. C. A. 3, 1942), 130 F. 2d 81; re *Kaufhold* (C. A. 3, 1958), 256 F. 2d 181; *Dunsdon* v. *Federal Land Bank* (C. A. 8, 1943), 137 F. 2d 84; Re *Lindholm* (D. C. N. D., 1955), 134 G. D. 301.

QUESTION NO. 5

Whether a surreptitious, fraudulent, pretended compromise transfer of a debtor's assets is properly upheld despite the absence of proper notice to creditors; the fact that the principal consideration is the waiver of fraudulent claims by the transferee; the creation of an unlawful preference; the existence of a far more substantial and advantageous competing offer; the opposition of the majority in number and amount of the creditors; the failure to have the property formally appraised; and the consistent and diligent acts of petitioners to prevent and vacate the attempted transfer.

The proceedings whereby respondents and the coterie working with them contrived to divest petitioner corporation of its assets were violative of numerous controlling statutes and adjudicated principles. The absence of notice to creditors, required by 11 U. S. Code Sec. 94, invalidated the transfer re *Loyd Bldg. Co.* (D. C. N. J., 1958), 116 F. Supp. 383. Respondent Evans-Johnson Company's "claim" was never filed and was therefore barred by 11 United States Code Sec. 93 (n), a statute strictly construed in other circuits. *McColgan* v. *Maier Brewing Co.* (C. C. A. 8, 1943), 134 F. 2d 385; *W. F. Sebel Co.* v. *Hessee* (C. A. 10, 1954), 214 F. 2d 459; *Wheeling Valley Coal Co.* v. *Mead* (C. A. 4, 1949), 171 F. 2d 916. The "claim" was not even tenable under the law of Ohio, where the premises are situated. *Economy Savings & Loan Co.* v. *Hollington* (1957), 105 Ohio App. 243. Evans-Johnson Company also

brazenly included in its "claim" an attempt to saddle the debtor with liability for work done on Michael Johnson's home, an admitted fraud (Rec. 832, 835, 636, 655-659, 1288). This and the concededly perjurious statements and fraudulent actions of the appellees merited criminal prosecution rather than such judicial condonation (p. 5, para. 15, Pet. for Rehearing). The approval of the alleged compromise had the effect of giving Evans-Johnson Company an illegal preference. Re *Geiselhart* (D. C. Pa., 1910), 181 F. 622. The offer was approved in the face of another offer which would have netted the estate more than four times the amount of cash, plus the assumption of liens, taxes and other items (Rec. 1484, 1582-1585), and the opposition of a majority in number and amount of the creditors. Elsewhere the wishes of creditors are accorded the utmost consideration. *Ashbach v. Kirtley* (C. A. 8, 1961), 289 F. 2d 159. There was no appraisal, as required by 11 United States Code Sec. 110 (3f), which alone should have sufficed to invalidate the transfer. Re *Frazin* v. *Oppenheim* (C. C. A. 2, 1910), 181 F. 307. The steps taken by petitioners to challenge, oppose and vacate the attempted compromise were prompt and consistent, and any attack on the correctness of their procedure contravenes this Court's construction of the statute then in effect. *Pfister* v. *Northern Illinois Finance Corp.* (1942), 317 U. S. 144. The requirement of conciseness in this petition precludes a fuller exposition of the foregoing matters and of other significant badges of fraud in the compromise transfer—all of which are discussed at length in the brief filed by petitioners in the Court of Appeals. Petitioners repeatedly argued against the very propriety of passing on the proposed compromise prior to the determination of a then pending application for the trustee's removal for numerous acts of gross malfeasance, many of them admitted. The transposition of the procedure below was

clearly error. See 2 Remington on Bankruptcy, Sec. 1112, re *Pick Barth Holding Corp.* (D. C. Del., 1933), 4 F. Supp. 228. In this, as in other aspects of the proceedings, the Courts below accorded no proper review, but consistently indorsed the prejudiced actions of the Referee, an effort to disqualify whom on substantial grounds (124a-136a) was denied on the ground that there was no such remedy under the law.

QUESTION NO. 6

Whether the refusal to approve reorganization was not contrary to the applicable statutes and controlling decisions.

The Chapter X petition for reorganization herein complied with all pertinent statutory provisions; there was nothing in the case tending to impeach its good faith, and the District Court was bound to approve it. 11 United States Code Sec. 541. Moreover, the procedure was proper and equitable, in accordance with principles repeatedly approved by this Court. *Sec. & Exch. Comm.* v. *U. S. Realty & Imp. Co.* (1940), 310 U. S. 462. Nevertheless, the application was evidently prejudged (Rec. 1325) and denied on spurious grounds (petition for rehearing, p. 12).

QUESTION NO. 7

Whether the holding sought to be reviewed fully and fairly considered the various questions presented by petitioners as appellants.

The record on appeal consisted of thousands of pages of testimony and about a 100 documents. The case was argued on March 19, 1963. Leave to file a reply brief was denied,

but appellants were given 3 days within which to submit a letter, which they did on March 22 (a Friday)—Exhibit A annexed to petition for rehearing *en banc*. By Monday, March 25, the case was already decided, with a short opinion making no mention of the majority of matters raised and the serious questions of law involved. Although appellants' brief cited upwards of sixty authorities they, with slight immaterial exceptions, are neither referred to in the opinion nor distinguished. In the absence of urgency it appears that this complicated litigation could not possibly have been accorded the extended examination and study which it unquestionably merited.

QUESTION NO. 8

Whether the summary denial of rehearing *en banc* was in conformity with the procedure suggested by this Court.

The memorandum opinion denying rehearing was as follows:

> "No active circuit judge having requested that the case be reheard in banc, the petition is denied."

This ruling was presumably pursuant to Rule 25 of the 2nd Circuit, as amended April 25, 1960.

In *Western Pacific Railroad Corp.* v. *Western Pacific Railroad Co.* (1953) 345 U. S. 247, 272, Mr. Justice FRANKFURTER declared that the adoption of rules for rehearing *en banc* could not be legally effective unless they required the Court "to apprise all active judges either of all decisions of panels of the Court or of those decisions which counsel bring to the Court's attention. There is nothing in the record to show that all or any of the other judges were informed of the application and it is submitted that petitioners were entitled to such consideration before denial.

QUESTION NO. 9

Whether the many important legal problems relating to the property of debtors or bankrupts, as well as improper activities calculated to defraud creditors and stockholders, and to extinguish tax liabilities are not such as to merit authoritative review.

It is not feasible to detail *ad nauseum* the host of irregularities and illegalities which have combined in this ardous litigation to effectuate most unjust results whose rectification in this Court is petitioner's last recourse. Needless to say, the purpose of the application is to preserve the rights and investments of the many hundreds of persons—both creditors and stockholders—that have been nullified. Along with them, the respective Federal and State governments have witnessed an erasure of law tax obligations.

Of equal moment is the urgent need that this Court declare unmistakably that it will not countenance what has happened herein, to the end that future litigants may not be similarly abused and potential wrongdoers conspiring to defraud, effectively warned against a repetition of the unjust and unlawful bankruptcy practices they might otherwise be encouraged to follow.

CONCLUSION

For all of the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

JACOB W. FRIEDMAN,
Attorney for Petitioners.

New York, May 16, 1963.

Appendix A

Opinion

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 285—October Term, 1962

(Argued March 19, 1963 Decided March 25, 1963)

Docket No. 27386

JOHN M. BENNETT,

Appellant,

vs.

LAWRENCE C. GUTMAN, Trustee and EVANS-JOHNSON COMPANY, Purchaser,

Appellees.

Before:

LUMBARD, *Chief Judge*,

CLARK and MARSHALL, *Circuit Judges*.

Consolidated appeal from orders of the United States District Court for the Southern District of New York, in a bankruptcy proceeding. The orders appealed from related to an adjudication of bankruptcy, an order of the referee in bankruptcy approving a compromise of disputed claims between the trustee in bankruptcy and a claimant against

the estate, and a petition for reorganization under Chapter X of the Bankruptcy Act.

Affirmed.

JACOB W. FRIEDMAN, New York, N. Y., *for appellant.*

LAWRENCE C. GUTMAN, New York, N. Y. (Leo H. Raines, New York, N. Y., on the brief), *for appellees.*

LUMBARD, *Chief Judge:*

These consolidated appeals from four orders of the United States Court for the Southern District of New York question proceedings of that court in the bankruptcy of Leatherhide Industries, Inc. Leatherhide and or John M. Bennett, who is its president and also one of its creditors, are denominated the appellants, but for all practical purposes Bennett alone is the party behind these appeals. The record indicates that Bennett, supported in a few instances by an attorney representing a number of creditors but not the Committee of Creditors, was also the primary, if not quite the sole, source of opposition throughout the protracted proceedings below. We affirm each of the orders in question.

The appellants challenge first the dismissal by Judge Bryan of a motion to review Referee Herzog's order of August 29, 1958, adjudicating Leatherhide a bankrupt. Judge Bryan held that the matter had already been litigated and settled by an order of Judge Bicks dated September 3, 1959. Memorandum decision of Judge Bryan, June 15, 1960. No appeal was ever taken from Judge Bick's order.

Appendix A

What the appellants sought to do by their motion before Judge Bryan was simply to disregard the prior order. The motion was properly dismissed.

The second order under attack is an order of Judge Cashin, dated August 8, 1960, which affirmed two orders of Referee Stephenson. The first approved a compromise of disputed claims between the trustee in bankruptcy and the Evans-Johnson Company, a claimant against the bankrupt estate. Order dated November 13, 1959. The second denied leave to file out of time a petition to review the first order. Opinion dated May 3, 1960. After entry of the referee's first order, Bennett made a series of abortive motions to secure review of it. His primary objection to the order was that the assets transferred to Evans-Johnson pursuant to the compromise were worth much more than Evans-Johnson paid for them in cash and the settlement of claims; the record leaves little doubt that Bennett's valuation of the transferred assets was, to say the least, highly exaggerated. In any event, although the court apprised him in plenty of time of the means by which he could secure review, see Bankruptcy Act § 39(c), 11 U. S. C. § 67(c),[1] he failed to adopt these means and continued to pursue his

[1] At the time in question, this section provided:

> "A person aggrieved by an order of a referee may, within ten days after the entry thereof, or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge * * *."

By Act of July 14, 1960, 74 Stat. 528, this was amended to provide that an extension of time beyond the ten-day period may be granted only if a petition for an extension of time is filed within the ten-day period. Unless a petition for review or petition for an extension of time within which to file a petition for review is filed within the ten-day period, the order of the referee becomes final

own course, apparently indifferent to both the statutes and judicial advice.[2] Nevertheless, Referee Stephenson accorded him a full hearing before denying leave to file a petition for review out of time. Denial was based both on a failure to show good cause for the delay in filing the petition and on a failure to show a probability of error in the original order approving the compromise. See *In re Advocate*, 140 F. 2d 783 (2 Cir. 1944). Judge Cashin agreed with the referee as to both points. We do also.

The appellants attack next an order of Judge Levet, dated December 10, 1959, which dismissed a petition of Leatherhide for reorganziation under Chapter X of the Bankruptcy Act. This was the second such petition to be filed. See *Leatherhide Industries, Inc.* v. *Lieberman*, 268 F. 2d 206 (2 Cir.), cert. denied, 361 U. S. 896 (1959). As the appellants have conceded, reorganization could not be carried through unless the bankrupty retained the assets which were transferred to the Evans-Johnson Company by the compromise referred to above. Since we have affirmed the order approving the compromise, there is no need to consider further the appeal from Judge Levet's order.

Finally, the appellants seek reversal of an order of Judge Cashin, dated October 26, 1961, in which he reaffirmed his order of August 8, 1960. This order was in response to appellants' motion for an order directing the referee to certify additional papers to the court and for reconsideration on the basis of such papers of the referee's order denying leave to file a belated petition for review of the order of November 13, 1959. One motion for the certification of additional papers having already been granted in

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[2] The history of these maneuvers is set out in Referee STEPHENSON's opinion of May 3, 1960, and also in Judge CASHIN's opinion of October 26, 1961, as to which see below.

its entirety, Judge Cashin found that there was no justification for the belated attempt to have other papers certified. We agree. In other respects, this order duplicates Judge Cashin's order of August 8, 1960, which we have affirmed above.

All of the orders under review are affirmed.

Appendix B

Judgment

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-fifth day of March, one thousand nine hundred and sixty-three.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,

HON. CHARLES E. CLARK,
HON. THURGOOD MARSHALL,
Circuit Judges.

In the Matter
of
LEATHERHIDE INDUSTRIES, INC.,
Bankrupt-Appellant,

JOHN M. BENNETT, *et al.*,
Creditors-Appellants.

Appendix B

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the orders of said District Court be and they are affirmed with costs to the appellee.

A. Daniel Fusaro,
Clerk.

Appendix C

Order

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

LEATHERHIDE INDUSTRIES, INC., and JOHN M. BENNETT,

Appellants,

vs.

LAWRENCE C. GUTMAN, Trustee, and EVANS-JOHNSON COMPANY, Purchaser,

Appellees.

PETITION FOR REHEARING IN BANC

Jacob Friedman, New York, N. Y.,
for appellants.

No active circuit judge having requested that the case be reheard in banc, the petition is denied.

J. EDWARD LUMBARD
Chief Judge

19 Apr 1963

Appendix D

Order

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

LEATHERHIDE INDUSTRIES, INC. and JOHN M. BENNETT,

Appellants,

vs.

LAWRENCE C. GUTMAN, Trustee, and EVANS-JOHNSON COMPANY, Purchaser,

Appellees.

PETITION FOR REHEARING

Jacob Friedman, New York, N. Y.,
for appellants.

Petition denied.

J. E. L.
C. E. C.
T. M.
U. S. C. JJ.

19 Apr 1963